

August 30, 1996

The Honorable Michael W. Morrissey  
The Honorable Daniel E. Bosley  
Joint Committee on Government Regulations  
State House, Room 472  
Boston, MA 02133

RE: D.P.U. 96-39  
Investigation by the Department on its own Motion to Review and Revise the  
Standard of Review for Electric Contracts Filed Pursuant to G.L. c. 164, § 94.

Dear Senator Morrissey and Representative Bosley:

On April 1, 1996, the Department of Public Utilities ("Department") issued a letter ("Letter") proposing changes to the Department's Standard of Review for Electric Contracts Filed Pursuant to G.L. c. 164, § 94. The Letter identified four issues which would be considered for clarification: (1) disclosure of formulas and rates; (2) non-bypassable stranded costs; (3) contract duration; and (4) confidentiality. The sixteen comments received pursuant to that letter were docketed as D.P.U. 96-39.<sup>1</sup>

The Department is keenly interested in ensuring that its policy with respect to special electric contracts is wholly consistent with its policies regarding the development of competitive marketplaces for suppliers of electricity. Thus, as these policies are currently being developed at the Department, the standards governing special electric contracts are subject to concomitant modification. With this in mind, the Department articulates the following guidelines for future special electric contract filings.

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<sup>1</sup> Comments were filed by Alternate Power Source, Attorney General, Boston Edison Company, Commonwealth Electric Company, Competitive Power Coalition, Crane & Co. (a paper manufacturer), Division of Energy Resources, Eastern Edison Company, Eastern Power Distribution, Inc, Electric Clearinghouse, Inc., Enron Capital & Trade Resources, Fitchburg Gas & Electric Company, Massachusetts Electric Company, Retailers Association of Massachusetts, Western Massachusetts Electric Company, and WMECo Industrial Customers Group.

First, the formulas and rates applicable under the special contract must be explicit, or at a minimum, readily derived from other information in the contract. Second, regardless of its anticipated duration, the contract must indicate that the purchaser of power under the contract will be subject to any approved stranded cost recovery mechanism, which will be non-bypassable and non-discriminatory. Third, the contracts must not have a duration of longer than two years, unless the contracts also contain a provision entitling either party to terminate the contract upon a short notice (usually 30 days) without penalties.

Fourth, the Department is authorized by statute to protect from public disclosure "trade secrets, confidential, competitively sensitive or other proprietary information" submitted in Department proceedings. G.L. c. 25, § 5D. However, there is a presumption that all information submitted to the Department is public information, and the statute places the burden on the proponent of protection to prove the need for such protection. Id. In the past, the Department has granted protection from disclosure to electricity contract price terms, because utilities have argued that disclosure of the price terms would weaken their competitive position in current and future negotiations with potential and existing customers. The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

We note that there may be other policies or requirements -- legal, regulatory, or otherwise -- not articulated in this letter that may affect the Department's review of a special contract. The above requirements, however, are prerequisites in any future contract filings.

Sincerely,

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John B. Howe, Chairman

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Janet Gail Besser, Commissioner

cc: Nancy Merrick, Director, Office of Consumer Affairs  
Mary L. Cottrell, Secretary  
All Massachusetts Electric Companies  
Joint Committee on Government Regulations  
All Commenters

Service List, D.P.U. 96-100